

**Letter of Findings: 04-20181712
Gross Retail and Use Tax
For the Years 2014, 2015, and 2016**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Vehicle Dealer provided additional documentation, including ST-105 Exemption Certificates, justifying a supplemental review of Vehicle Dealer's proposed assessment of additional sales and use tax.

ISSUE

I. Gross Retail Tax - Exemption Certificates.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-8-8(d); IC § 6-8.1-5-1(c); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, (Ind. Tax Ct. 2007). [45 IAC 2.2-8-12\(d\)](#); [45 IAC 2.2-8-12\(c\)](#); [45 IAC § 2.2-8-12\(f\)](#).

Taxpayer argues that the Department's assessment of additional sales and use tax is overstated because Taxpayer can now supply ST-105 exemption certificates received from certain of its retail customers.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of selling sports utility vehicles, agricultural equipment, and motorcycles. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records and tax returns.

According to the resulting audit report, Taxpayer entered into sales transactions which it categorized as "exempt" but the sales records "did not include [the customer's] exemption certificate for review." Taxpayer was provided a "notice of non-compliance" and "given fourteen days (14) to supply either a valid exemption certificate for the audit period or other proof that the sales transactions were exempt, including the special exemption certificate."

Again, according to the written audit report, Taxpayer was then provided additional time in which to provide the requested documentation. However, Taxpayer did not provide the documentation within the time period specified by Taxpayer.

The Department's audit concluded that Taxpayer was subject to additional sales tax. Subsequently, the Department issued proposed notices of additional tax. Taxpayer disagreed with the assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Gross Retail Tax - Exemption Certificates.

DISCUSSION

The issue is whether Taxpayer has supplied additional documentation - including customer exemption certificates - which warrant additional review and reconsideration of the Taxpayer's proposed tax assessments. As explained by Taxpayer's representative, "[I]t appears that the major issue was the [T]axpayer's inability to provide exemption certificates by the deadline established during the field audit."

In its audit report, the Department cited to [45 IAC 2.2-8-12\(c\)](#) as authority for imposing the tax. The regulation

provides:

All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. The burden of proof is on the buyer and also on the seller *unless the seller receives an exemption certificate*.

(*Emphasis added*).

The regulation imposes on Taxpayer the burden of providing the exemption certificates or overcoming the presumption that all of its sales are subject to tax. In addition, Taxpayer must prove that the audit assessment is incorrect because all assessments are *prima facie* evidence that the Department's assessment of tax is presumed correct; the taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopolite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

As a consequence, each taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

Indiana imposes sales tax under IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as agent for the state.*

(*Emphasis added*).

Most relevant in this case, is that in the absence of valid exemption certificates, [45 IAC 2.2-8-12](#)(d) makes it clear that Taxpayer bears the burden of proving that sales tax was remitted to the state. The provision requires in part:

Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose.

As authority for rejecting certain of the certificates, the audit cited to 45 IAC § 2.2-8-12(f) which states:

An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.

In addition, the audit cited to IC § 6-2.5-8-8(d) which provides:

A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains:

- (1) a fully completed exemption certificate; or
- (2) the relevant data to complete the exemption certificate; within ninety (90) days after the sale.

The law on this issue is straightforward; retail transactions are presumed to be subject to sales tax, and the merchant is responsible for the tax unless the merchant proves otherwise or collects a properly completed exemption certificate from the customer. To the extent that Taxpayer has provided valid exemption certificates, Taxpayer is entitled to a review of that documentation. To the extent that Taxpayer has provided valid exemption certificates for the transactions at issue, Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained subject to review and verification by the Department's Audit Division.

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